

1 WILLIAM P. WOOD  
 California Corporations Commissioner  
 2 VIRGINIA JO DUNLAP (CA BAR NO. 142221)  
 Deputy Commissioner  
 3 ALAN S. WEINGER (CA BAR NO. 86717)  
 Supervising Counsel  
 4 JUDY L. HARTLEY (CA BAR NO. 110628)  
 Senior Corporations Counsel  
 5 Department of Corporations  
 320 West 4<sup>th</sup> Street, Ste. 750  
 6 Los Angeles, California 90013-2344  
 Telephone: (213) 576-7604 Fax: (213) 576-7181

7 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF CORPORATIONS  
 10 OF THE STATE OF CALIFORNIA

12 In the Matter of THE CALIFORNIA	) Case No.: 413-0252
13 CORPORATIONS COMMISSIONER,	)
14 Complainant,	) STIPULATION TO AMEND ORDER TO
15 vs.	) REFUND CREDIT REPORT FEES AND
16 MOUNTAIN STATES MORTGAGE	) ORDER TO DISCONTINUE VIOLATIONS
17 CENTERS, INC.,	)
18 Respondent.	)
19	)

20 This Stipulation is entered into between Mountain States Mortgage Centers, Inc.  
 21 (“Mountain”) and the California Corporations Commissioner ("Commissioner"), and is made with  
 22 respect to the following facts:

23 **RECITALS**

24 A. Mountain is a corporation in good standing, duly formed and existing pursuant to the  
 25 laws of the State of Utah, and authorized to conduct business in the State of California.

26 B. Jerilyn R. Greene is the President of Mountain and is authorized to enter into this  
 27 Stipulation on behalf of Mountain.  
 28

1 C. Mountain is a residential mortgage lender and servicer licensed by the Commissioner  
2 under the provisions of the California Residential Mortgage Lending Act (California Financial Code  
3 §§ 50000 et seq.) (“CRMLA”).

4 D. On August 28, 2002, Mountain was served by the Commissioner with a Notice of  
5 Intent To Make Order Final, Order to Discontinue Violations Pursuant to Financial Code Section  
6 50321, Statement of Facts and accompanying documents issued by the Commissioner on August 28,  
7 2002. Mountain has filed a Notice of Defense with the Commissioner.

8 E. On August 28, 2002, Mountain was also served with an Order to Refund Credit  
9 Report Fees issued by the Commissioner on August 28, 2002. Mountain has filed a Notice of  
10 Defense with the Commissioner.

11 F. An administrative hearing is currently scheduled for July 27 and 28, 2004.

12 G. It is the intention and desire of the parties to resolve this matter without the necessity  
13 of a hearing and/or other litigation.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
15 forth herein, the parties stipulate as follows:

16 **TERMS AND CONDITIONS**

17 1. This Stipulation is entered into for the purpose of judicial economy and expediency,  
18 and to avoid the expense of a hearing, and possible further court proceedings.

19 2. Mountain admits that in connection with one or more residential mortgage loans  
20 subject to the CRMLA, Mountain (i) charged and received from the borrowers, prior to loan closing,  
21 fees designated as “credit report fees” which were greater than the actual charges incurred by  
22 Mountain for these third party services; (ii) charged and received from the borrowers fees designated  
23 as “credit report fees” which were greater than the actual charges incurred by Mountain for these  
24 third party services; and (iii) failed to disclose to whom it paid credit report fees on the Settlement  
25 Statement prepared and provided to borrowers. The admissions of Mountain are solely for the  
26 limited purposes of these proceedings and any future proceeding(s) that may be initiated by or  
27 brought before the Commissioner against Mountain under the CRMLA or any other law regulated by  
28 the Commissioner. It is the intent and understanding between the parties that this Stipulation and

1 particularly the admissions of Mountain herein, shall not be binding or admissible against Mountain  
2 in any action(s) brought against Mountain by third parties.

3 3. Notwithstanding its admissions herein, Mountain contends that charging borrowers  
4 credit report fees greater than the amount incurred by Mountain to the third party vendor does not  
5 violate any provision of the CRMLA.

6 4. The Commissioner contends that Mountain's activities with respect to charging and  
7 receiving credit report fees in an amount greater than the amount incurred by Mountain to the third  
8 party vendor violates California Financial Code sections 50203(a), 50204(i) and 50505.

9 5. Mountain has made appropriate refunds with interest at 10% per annum to each  
10 affected borrower.

11 6. Mountain consents to the immediate issuance by the Commissioner of an Amended  
12 Order To Discontinue Violations Pursuant to California Financial Code Section 50321, a copy of  
13 which is attached and incorporated as Exhibit A, and which the parties agree shall be the final order  
14 to discontinue violations in this matter pursuant to California Financial Code section 50323.

15 7.. The Commissioner hereby agrees to amend the Statement of Facts In Support of the  
16 Order to Discontinue Violations as set forth in the Amended Statement of Facts attached and  
17 incorporated as Exhibit B.

18 8. The Commissioner hereby agrees to amend the Order to Refund Credit Report Fees  
19 as set forth in the Amended Order to Refund Credit Report Fees attached and incorporated as  
20 Exhibit C.

21 9. Mountain acknowledges its right to a hearing under the CRMLA in connection with  
22 these matters and hereby waives that right to a hearing, and to any reconsideration, appeal, or other  
23 right to review which may be afforded pursuant to the CRMLA, the California Administrative  
24 Procedure Act, the California Code of Civil Procedure, or any other provision of law.

25 10. Mountain agrees to pay the sum of \$5,824.03 to the Commissioner for its costs and  
26 expenses in this matter. Mountain agrees to pay this sum along with the outstanding invoice balance  
27 of \$9,837.94 on its most recent regulatory examination to the Commissioner in three equal monthly  
28 installments of \$5,220.66 commencing July 26, 2004 and ending September 26, 2004.

1           11.     The parties hereby acknowledge that this Stipulation is intended to constitute a full,  
2 final and complete resolution of the matters described in paragraphs D and E above. However, the  
3 Commissioner reserves the right to initiate further action and/or prosecute Mountain, its officers,  
4 directors, employees, agents, and/or its affiliates for any other violations of the CRMLA relating to  
5 the 2001 regulatory examination, if such action is based upon facts not presently known to the  
6 Commissioner. The parties further acknowledge and agree that nothing contained in this Stipulation  
7 shall operate to limit the Commissioner's ability to assist any other agency, (county, state or federal)  
8 with any prosecution, administrative, civil or criminal, brought by any such agency against Mountain  
9 or its officers, directors, employees, agents, and/or its affiliates based upon any of the activities  
10 alleged in the orders described herein or otherwise.

11           12.     Each of the parties represents, warrants, and agrees that it has received independent  
12 advice from its attorney(s) and/or representatives with respect to the advisability of executing this  
13 Stipulation.

14           13.     Each of the parties represents, warrants, and agrees that in executing this Stipulation  
15 it has relied solely on the statements set forth herein and the advice of its own counsel and/or  
16 representative. Each of the parties further represents, warrants, and agrees that in executing this  
17 Stipulation it has placed no reliance on any statement, representation, or promise of any other party,  
18 or any other person or entity not expressly set forth herein, or upon the failure of any party or any  
19 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
20 The parties have included this clause: (1) to preclude any claim that any party was in any way  
21 fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol  
22 evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

23           14.     This Stipulation is the final written expression and the complete and exclusive  
24 statement of all the agreements, conditions, promises, representations, and covenants between the  
25 parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous  
26 agreements, negotiations, representations, understandings, and discussions between and among the  
27 parties, their respective representatives, and any other person or entity, with respect to the subject  
28 matter covered hereby.

1           15.     In that the parties have had the opportunity to draft, review and edit the language of  
2 this Stipulation, no presumption for or against any party arising out of drafting all or any part of this  
3 Stipulation will be applied in any action relating to, connected, to, or involving this Stipulation.  
4 Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor  
5 or amended statute, providing that in cases of uncertainty, language of a contract should be  
6 interpreted most strongly against the party who caused the uncertainty to exist.

7           16.     This Stipulation may be executed in one or more counterparts, each of which shall be  
8 an original but all of which, together, shall be deemed to constitute a single document.

9           17.     Each signator hereto covenants that he/she possesses all necessary capacity and  
10 authority to sign and enter into this Stipulation.

11 Dated: July 22, 2004

WILLIAM P. WOOD

California Corporations Commissioner

By \_\_\_\_\_

ALAN S. WEINGER

Supervising Counsel

16 Dated: \_\_\_\_\_

MOUNTAIN STATES MORTGAGE CENTERS, INC.

By \_\_\_\_\_

JERILYN R. GREENE, President

19 APPROVED AS TO FORM:

20 TROY & GOULD PC

21 By \_\_\_\_\_

22 ALAN B. SPATZ, Attorneys for MOUNTAIN  
23 STATES MORTGAGE CENTERS, INC.

24 WILLIAM P. WOOD

25 California Corporations Commissioner

26 By \_\_\_\_\_

27 JUDY L. HARTLEY, Senior Corporations Counsel